

DECISION SHEET OF THE OIL & GAS APPELLATE REFEREE

APPLICANT: CITIZEN ENERGY II, LLC)
)
RELIEF SOUGHT: POOLING)
)
LEGAL DESCRIPTION: SECTION 13, TOWNSHIP 9)
NORTH, RANGE 6 WEST,)
GRADY COUNTY, OKLAHOMA)

CAUSE CD NO.
201506166-
FILED
JUL 22 2016

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPLICANT: CITIZEN ENERGY II, LLC)
)
RELIEF SOUGHT: POOLING)
)
LEGAL DESCRIPTION: SECTION 24, TOWNSHIP 9)
NORTH, RANGE 6 WEST,)
GRADY COUNTY, OKLAHOMA)

CAUSE CD NO.
201506167-
T/O

**ORAL APPEAL OF THE ADMINISTRATIVE LAW JUDGE' RULING
IN RESPONSE TO MOTIONS TO VACATE ORDERS AND TO
REOPEN CAUSES**

The Motions to Vacate Order Nos. 652804 and 653111 and to Reopen Causes came on before **Michael L. Decker**, Administrative Law Judge ("ALJ"), for the Corporation Commission of the State of Oklahoma, on the 20th day and 27th day of June, 2016 at 9:00 a.m. in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission for the purpose of taking testimony and reporting to the Commission.

APPEARANCES: **William H. Huffman**, attorney, appeared on behalf of applicant, Citizen Energy II, L.L.C. ("Citizen"); **Gregory L. Mahaffey**, attorney, appeared on behalf of Gaedeke Holding IV, LTD, and Gaedeke Oil & Gas Operating, L.L.C. ("Gaedeke"); **Richard A. Grimes**, attorney, appeared on behalf of Mid-Continent II, LLC, Linn Energy Holdings, LLC and Linn Operating, Inc. ("Linn"); **Robert A. Miller**, attorney, appeared on behalf of Marathon Oil Company ("Marathon"); **David E. Pepper**, attorney, appeared for

EOG Resources ("EOG"); and **James L. Myles**, Deputy General Counsel for Deliberations, filed notice of appearance.

The ALJ filed his Oral Report of the Administrative Law Judge on the 27th day of June, 2016, to which Exceptions were timely filed and proper notice given of the setting of the Exceptions.

The Oral Arguments concerning the Exceptions were referred to Patricia D. MacGuigan, Oil and Gas Appellate Referee ("Referee"), on the 18th day of July, 2016. After considering the arguments of counsel and the record contained within these Causes, the Referee finds as follows:

STATEMENT OF THE CASE

- 1) Cause CD 201506166-T/O is the application of Citizen Energy II, L.L.C. for forced pooling covering Section 13, T9N, R6W, Grady County, Oklahoma.
- 2) Cause CD 201506167-T/O is the application of Citizen Energy II, L.L.C. for forced pooling covering Section 24, T9N, R6W, Grady County, Oklahoma.
- 3) The Motions by Gaedeke were filed in CD 201506166-T/O and CD 201506167-T/O pursuant to OCC-OAC 165:5-17-1. At the conclusion of the hearing on June 20, 2016, Gaedeke's counsel requested the orders pursuant to the Motions be made effective as of June 20, 2016.
- 4) The Motions were filed on May 31, 2016 and June 11, 2016, for the respective orders, and notice of the Motions was provided to all owners impacted by the orders. The Motions seek to reopen the applications for presentation of evidence not available at the time of the hearing, that being facts concerning the May 11, 2016 filing of Chapter 11 Bankruptcy by Linn in Federal Bankruptcy Court in Texas.
- 5) A transcript of the May 10, 2016, hearing before ALJ Leavitt was reviewed by the witness. It indicated there was no testimony provided to ALJ Leavitt regarding Linn's plan to file Chapter 11 bankruptcy on May 11, 2016. Gaedeke asserts the facts surrounding Linn's bankruptcy should be considered a change of condition since the dates of Order Nos. 652804 and 653111 justifying the vacation and modification of the orders.

REPORT OF THE ALJ

- 1) The ALJ recommends that the Motions filed by Gaedeke, should be GRANTED IN PART AND DENIED IN PART.

2) The Motions should be granted to permit the rehearing of the two pooling applications for the limited purpose of informing the initial ALJ about the Chapter 11 bankruptcy filing made by Linn on May 11, 2016. The Motions should be granted for consideration of any modification of Order Nos. 652804 and 653111 to ensure the operator will take proper steps to safeguard the funds of working interest owners that elect to participate and tender drilling costs for the well(s) proposed under the terms of the orders. Also, inquiry should be made regarding the operator's efforts to secure the proper payment of bonus and royalty to owners that elect to not participate in the well(s) proposed under the terms of the orders.

3) The Motions should be denied regarding the request that Order Nos. 652804 and 653111 be vacated, and regarding any effort to gain the present change of operator pursuant to the orders. The change of operator issue is the subject of JOAs' disputes, over which the OCC has no jurisdiction to adjudicate at the present time.

4) Based upon the evidence and the arguments of the parties presented on June 20, 2016, the ALJ recommends the finding that the Motions were filed timely within ten days of the issuance of Order Nos. 652804 and 653111. Gaedeke should be deemed to have standing to file the Motions pursuant to OCC-OAC 165:5-17-1. The testimony shows Gaedeke is an owner of a mineral interest in the Woodford common source of supply, and thus has standing to file applications and motions requesting relief with the OCC pursuant to 52 O.S. Section 87.1. See *Spaeth v. Corporation Commission*, 597 P.2d 320, (Okl. 1979) ¶¶ 2-3. Moreover, pursuant to statute, Gaedeke is a "person affected by a legislative or administrative order . of the OCC, which...shall have the right at any time to apply to the Commission to repeal, amend, modify, or supplement the same." 52 O.S. Section 112.

5) The effective date of June 20, 2016, for the orders granting rehearing and consideration of modification should be granted as requested by Gaedeke. Regardless of the request for a June 20, 2016, effective date, the determination is recommended that the OCC does not lose jurisdiction over pertinent issues concerning a forced pooling order through the passage of the 30 day appeal time. 52 O.S. Section 87.1 and OCC Rules of Practice provide for the OCC's continuing jurisdiction to review forced pooling orders concerning several issues, i.e., redetermination of well costs or the extension of time of the primary term of the order. Forced pooling orders remain in effect for the term established in each order, or when extended after proper notice and hearing. Therefore, the OCC maintains continuing jurisdiction to consider amendment or modification of an order pursuant to 52 O.S. Section 112 and OCC-OAC 165:5-17-1 and 165:5-17-2.

6) It is customary that the order provides the initial payment of bonuses is not required until 35 days following the issuance of the order, which is the requirement of the instant orders. Thereafter, the operator remains liable for the payment of bonuses beyond the term of the order. Also, in the case of Order Nos. 652804 and 653111, the payment of well costs is tied to notice of spud provisions (see paragraphs 6.1 at page 2 of each order, Order No. 652804 and Order No. 653111), which perhaps will not become effective until well beyond the appeal time. Such factors are indications that the OCC retains continuing authority over certain aspects of an operator's performance under a forced pooling order beyond the 30 day appeal period.

7) The Motions should be granted for rehearing of the applications for the limited purpose of informing the initial ALJ about the Chapter 11 bankruptcy filing made by Linn on May 11, 2016. The Motions should be granted for consideration of any modification of Orders 652804 and 653111 to ensure the operator will take proper steps to safeguard the funds of working interest owners that elect to participate and tender drilling costs for the well(s) proposed under the terms of the orders. Also, inquiry should be made regarding operator's efforts to secure the proper payment of bonus and royalty to owners that elect to not participate in the well(s) proposed under the terms of the orders. The Oklahoma Supreme Court has long held that the OCC is empowered to take steps in a forced pooling proceeding to ensure the financial security of the operator with relation to working interest owners that elect to participate in proposed wells and tender well costs to an operator under the terms of an order. See *Superior Oil Co. v. Corporation Commission*, 242 P.2d 454, (Okl. 1952) , at ¶¶ 20-21. In the instant applications, the facts regarding Linn's bankruptcy should be provided to the initial ALJ, so consideration can be given to whether the working interest and royalty interest owners are protected pursuant to Order Nos. 652804 and 653111.

8) The Motions should be denied regarding the request that Order Nos. 652804 and 653111 be vacated, and regarding any effort to gain the present change of operator pursuant to the orders. The change of operator issue is the subject of JOA disputes, which the OCC has no jurisdiction to adjudicate at the present time. It is apparent from the transcript of the May 10, 2016, hearing before ALJ Leavitt that Marathon was dismissed from the applications because the drilling of the wells in question for Sections 13 and 24, 9N-6W, Grady County, Oklahoma, would be "...under the terms of the JOA that's in place." See Exhibit "F", Transcript of Proceedings, (May 10, 2016) Lines 1 and 2, page 25. The facts regarding Linn's bankruptcy can be provided without any need to review the JOAs and the status of the dispute regarding the operator of the units under the terms of the JOAs. The JOA disputes regarding election of a replacement operator are private disputes beyond the jurisdiction of the OCC. See *Leede Oil & Gas, Inc. v. Corporation Commission*, 747 P.2d 294 (Okl.1987); *Samson Resources Co. v. Corporation Commission*, 702 P.2d 19 (Okl. 1988); and *Hadson Petroleum Corp. v. Jack Grynberg & Associates*, 763 P.2d 87 (Okl.

1988). Once the JOA operator disputes are resolved, Gaedeke can file the appropriate OCC applications to change the operator designation under Order Nos. 652804 and 653111, if such actions are necessary.

9) The impact of the automatic stay provided in the Federal Bankruptcy Codes (11 U.S.C. ¶ 362(a)) should be determined by the OCC to fall within the regulatory agency proceeding exception of the same provision of the Code. (11 U.S.C. ¶ 362(b)(4)) The forced pooling process provided in 52 O.S. Section 87.1 is an exercise of the OCC's statutory police power. *Patterson v. Stanolind Oil & Gas Co.*, 77 P.2d 83 (Okl. 1938) and *Anderson v. Corporation Commission*, 327 P.2d 699 (Okl. 1957). The determination of "just and reasonable" terms for participation by working interest owners pursuant to a forced pooling order, the designation of unit operator, and the arrangements for ensuring the financial security of the operator to working interest and royalty interest owners under the terms of a forced pooling order, are fully within the public policy test supporting the applicability of the regulatory agency proceeding exception to the Bankruptcy Code's automatic stay provision. *Halo Wireless, Inc. v. Alenco Communications, Inc.* 684 F. 3d 581 (5th Cir., 2012). Gaedeke filed a legal memorandum on June 27, 2016, which supported the interpretation that the regulatory agency proceeding exceptions to the Bankruptcy Code's automatic stay should apply to the instant applications and motions. If an order of the appropriate bankruptcy court is needed to finally determine the applicability of the regulatory agency proceeding exception to the instant forced pooling matters, the OCC should request that the parties take steps to obtain such an order.

DECISION OF THE OIL & GAS APPELLATE REFEREE

1) Gaedeke is the only party that announced an appeal and Gaedeke's appeal is limited to that portion of the ALJ's ruling that denied the Motions to Vacate pooling Order No. 652804 and pooling Order No. 653111 and name Gaedeke with more than 50% of the working interest as operator of the multiunit well. The present two pooling applications were heard together as unopposed causes and presented last on May 10, 2016. The motions were filed by Gaedeke pursuant to OCC-OAC 165:5-17-1. On May 11, 2016 the designated operator Linn filed Chapter 11 bankruptcy. Gaedeke acquired 30% of the interest of Marathon in Sections 13 and 24 and 100% of their interest in an additional Woodford well to be drilled. There was a vote called under the JOA to remove Linn as operator. 90% of the parties, after excluding Linn's interest in one unit, and 70% interest in the other unit, voted to remove Linn as operator and to designate Gaedeke as operator. That was the basis for Gaedeke filing these Motions to Vacate Order No. 652804 and Order No. 653111.

2) The Commission has no authority to interpret a private JOA. It cannot interpret what those provisions, in the present case, Exhibit "C", the Model Form Operating Agreement, Exhibit "D" the June 15, 2016 letter concerning the JOA from Gaedeke to Marathon and Exhibit "E" the June 17, 2016 letter from Gaedeke to Linn concerning the JOA. The Commission has no authority to interpret the JOA (Article V. Operator B. Resignation or Removal of Operator and Selection of Successor. Page 4.) The Commission has no authority to interpret whether or not the vote has taken place to replace the operator or not. The Commission certainly cannot interpret the effect of bankruptcy on a JOA to remove an operator. If a party approached the Commission and stated he wanted the Commission to interpret the JOA to say that a certain party is operator, the Commission has no authority to do that. There is now a bankruptcy court that has assumed jurisdiction over the assets and estate of Linn and presently there is the question as to what effect the filing of bankruptcy would do upon enforcing this private agreement. This private agreement is subject to the District Court and/or now the Bankruptcy Court's questions that arise concerning this agreement. The Commission does not have the authority to interpret a private agreement or to determine whether a private agreement is consistent with the Commission's authority.

3) ALJ Decker stated in his Report that if Gaedeke wants to change operator they must file a new application. ALJ Decker is requiring a separate proceeding where Gaedeke can file the appropriate OCC applications to change the operator designation under Order No. 652804 and Order No. 653111, if such actions are necessary. Gaedeke believes this would be judicial waste because if you vacate the order now it can be decided now and not have to go through a separate proceeding.

4) ALJ Decker in his Report on page 10, paragraph 4 states:

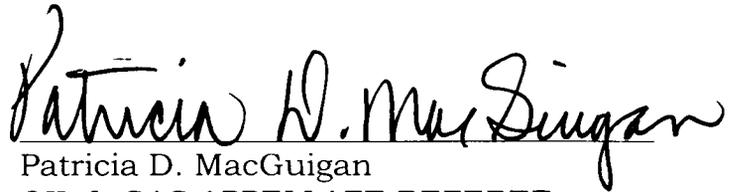
* * *

The Motions should be denied regarding the request that Orders 652804 and 653111 be vacated, and regarding any effort to gain the present change of operator pursuant to the orders. The change of operator issue is the subject of JOA disputes, which the OCC has no jurisdiction to adjudicate at the present time. It is apparent from the transcript of the May 10, 2016, hearing before ALJ Leavitt that Marathon was dismissed from the application because the drilling of the wells in question for Sections 13 and 24, 9N-6W, Grady County, Oklahoma, would be "...under the terms of the JOA that's in place." See Exhibit F, Transcript of Proceedings, (May 10, 2016) Lines 1 and 2, page 25. The facts regarding the Protestant's bankruptcy can be provided without any

need to review the JOAs and the status of the dispute regarding the operator of the units under the terms of the JOAs. The JOA disputes regarding election of a replacement operator are private disputes beyond the jurisdiction of the OCC. See *Leede Oil & Gas, Inc. v. Corporation Commission*, 1987 OK 117, 747 P.2d 294; *Samson Resources Co. v. Corporation Commission*, 1988 OK 31, 702 P.2d 19; and *Hadson Petroleum Corp. v. Jack Grynberg & Associates*, 1988 OK 100, 763 P.2d 87. Once the JOA operator disputes are resolved, the Movant can file the appropriate OCC applications to change the operator designation under Orders 652804 and 653111, if such actions are necessary.

5) For the above state reasons and the reasons put forth by the ALJ in his Oral Report, the ALJ's recommendations should be affirmed.

RESPECTFULLY SUBMITTED THIS 22nd day of July, 2016.


Patricia D. MacGuigan
OIL & GAS APPELLATE REFEREE

PM:ac

xc: Commissioner Anthony
Commissioner Murphy
Commissioner Hiatt
James L. Myles
William H. Huffman
Gregory L. Mahaffey,
Richard A. Grimes
David E. Pepper
Robert A. Miller
Michael L. Decker, ALJ/OAP Director
Oil-Law Records